



April 4, 2003

ENGROSSED HOUSE BILL No. 1935

DIGEST OF HB 1935 (Updated April 1, 2003 1:45 PM - DI 71)

Citations Affected: IC 3-7; IC 4-1; IC 4-33; IC 5-14; IC 9-14; IC 10-13; IC 16-19; noncode.

Synopsis: Various public records matters. Makes various changes in the laws concerning access to public records and the collection and protection of personal information.

Effective: Upon passage; July 1, 2003.

Oxley, Young D, Ruppel

(SENATE SPONSORS — MERRITT, WYSS, YOUNG R)

January 23, 2003, read first time and referred to Committee on Appointments and Claims.
February 25, 2003, amended, reported — Do Pass.
March 3, 2003, read second time, ordered engrossed. Engrossed.
March 4, 2003, read third time, passed. Yeas 97, nays 0.

SENATE ACTION

March 13, 2003, read first time and referred to Committee on Transportation and Homeland Security.
April 3, 2003, amended, reported favorably — Do Pass.

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EH 1935—LS 7826/DI 87+



April 4, 2003

First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

ENGROSSED HOUSE BILL No. 1935

A BILL FOR AN ACT to amend the Indiana Code concerning state offices and administration.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 3-7-28-7 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE UPON PASSAGE]: Sec. 7. Notwithstanding
3 ~~IC 5-14-3-4(c)~~, **IC 5-14-3-3(f)**, additional copies of the registration
4 lists prepared for the inspectors of each precinct shall be kept open to
5 the public for inspection and copying in the same manner as other
6 public records under IC 5-14-3 at the office of the circuit court clerk or
7 board of registration as soon as the registration lists are completed.
8 SECTION 2. IC 4-1-8-1, AS AMENDED BY P.L.215-2001,
9 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
10 UPON PASSAGE]: Sec. 1. (a) No individual may be compelled by any
11 state agency, board, commission, department, bureau, or other entity of
12 state government (referred to as "state agency" in this chapter) to
13 provide the individual's Social Security number to the state agency
14 against the individual's will, absent federal requirements to the
15 contrary. However, the provisions of this chapter do not apply to the
16 following:
17 (1) Department of state revenue.

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(2) Department of workforce development.

(3) The programs administered by:

(A) the division of family and children;

(B) the division of mental health and addiction;

(C) the division of disability, aging, and rehabilitative services;
and

(D) the office of Medicaid policy and planning;

of the office of the secretary of family and social services.

(4) Auditor of state.

(5) State personnel department.

(6) Secretary of state, with respect to the registration of
broker-dealers, agents, and investment advisors.

(7) The legislative ethics commission, with respect to the
registration of lobbyists.

(8) Indiana department of administration, with respect to bidders
on contracts.

(9) Indiana department of transportation, with respect to bidders
on contracts.

(10) Health professions bureau.

(11) Indiana professional licensing agency.

(12) Indiana department of insurance, with respect to licensing of
insurance agents.

(13) A pension fund administered by the board of trustees of the
public employees' retirement fund.

(14) The Indiana state teachers' retirement fund.

(15) The state police benefit system.

(b) The bureau of motor vehicles may, notwithstanding this chapter,
require the following:

(1) That an individual include the individual's Social Security
number in an application for an official certificate of title for any
vehicle required to be titled under IC 9-17.

(2) That an individual include the individual's Social Security
number on an application for registration.

(3) That a corporation, limited liability company, firm,
partnership, or other business entity include its federal tax
identification number on an application for registration.

(c) The Indiana department of administration, the Indiana
department of transportation, the health professions bureau, and the
Indiana professional licensing agency may require an employer to
provide its federal employer identification number.

(d) The department of correction may require a committed offender
to provide the offender's Social Security number for purposes of

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1 matching data with the Social Security Administration to determine
2 benefit eligibility.

3 (e) The Indiana gaming commission may, notwithstanding this
4 chapter, require the following:

5 (1) That an individual include the individual's Social Security
6 number in any application for a riverboat owner's license,
7 supplier's license, or occupational license.

8 (2) That a sole proprietorship, a partnership, an association, a
9 fiduciary, a corporation, a limited liability company, or any other
10 business entity include its federal tax identification number on an
11 application for a riverboat owner's license or supplier's license.

12 **(f) Notwithstanding this chapter, the professional standards**
13 **board established by IC 20-1-1.4-2 may require an individual who**
14 **applies to the board for a license or an endorsement to provide the**
15 **individual's Social Security number. The Social Security number**
16 **may be used by the board only for conducting a background**
17 **investigation, if the board is authorized by statute to conduct a**
18 **background investigation of an individual for issuance of the**
19 **license or endorsement.**

20 SECTION 3. IC 4-1-9 IS ADDED TO THE INDIANA CODE AS
21 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON
22 PASSAGE]:

23 **Chapter 9. Background Check of Employees of Bodies**
24 **Corporate and Politic**

25 **Sec. 1. This chapter applies only to a body corporate and politic.**

26 **Sec. 2. This chapter does not apply to a political subdivision.**

27 **Sec. 3. A body corporate and politic shall establish a policy for**
28 **conducting background checks of persons for purposes of**
29 **employment with the body corporate and politic.**

30 **Sec. 4. A policy adopted under this chapter may not be less**
31 **stringent than a background check policy implemented by the state**
32 **personnel department for employment with a state agency that is**
33 **subject to the jurisdiction of the state personnel department.**

34 SECTION 4. IC 4-33-4-18 IS AMENDED TO READ AS
35 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 18. The state police
36 department shall assist the commission in conducting background
37 investigations of applicants. **The commission may forward all**
38 **fingerprints required to be submitted by license applicants under**
39 **IC 4-33 to the Federal Bureau of Investigation or any other agency**
40 **for the purpose of screening applicants.** The commission shall
41 reimburse the state police department for the costs incurred by the state
42 police department as a result of the assistance. The commission shall



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1 make the payment from fees collected from applicants.

2 SECTION 5. IC 5-14-3-2, AS AMENDED BY P.L.90-2002,
3 SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
4 UPON PASSAGE]: Sec. 2. As used in this chapter:

5 "Copy" includes transcribing by handwriting, photocopying,
6 xerography, duplicating machine, duplicating electronically stored data
7 onto a disk, tape, drum, or any other medium of electronic data storage,
8 and reproducing by any other means.

9 "Direct cost" means one hundred five percent (105%) of the sum of
10 the cost of:

- 11 (1) the initial development of a program, if any;
- 12 (2) the labor required to retrieve electronically stored data; and
- 13 (3) any medium used for electronic output;

14 for providing a duplicate of electronically stored data onto a disk, tape,
15 drum, or other medium of electronic data retrieval under section 8(g)
16 of this chapter, or for reprogramming a computer system under section
17 6(c) of this chapter.

18 "Electronic map" means copyrighted data provided by a public
19 agency from an electronic geographic information system.

20 "Enhanced access" means the inspection of a public record by a
21 person other than a governmental entity and that:

- 22 (1) is by means of an electronic device other than an electronic
23 device provided by a public agency in the office of the public
24 agency; or
- 25 (2) requires the compilation or creation of a list or report that does
26 not result in the permanent electronic storage of the information.

27 "Facsimile machine" means a machine that electronically transmits
28 exact images through connection with a telephone network.

29 "Inspect" includes the right to do the following:

- 30 (1) Manually transcribe and make notes, abstracts, or memoranda.
- 31 (2) In the case of tape recordings or other aural public records, to
32 listen and manually transcribe or duplicate, or make notes,
33 abstracts, or other memoranda from them.
- 34 (3) In the case of public records available:
 - 35 (A) by enhanced access under section 3.5 of this chapter; or
 - 36 (B) to a governmental entity under section 3(c)(2) of this
37 chapter;

38 to examine and copy the public records by use of an electronic
39 device.

- 40 (4) In the case of electronically stored data, to manually transcribe
41 and make notes, abstracts, or memoranda or to duplicate the data
42 onto a disk, tape, drum, or any other medium of electronic

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1 storage.

2 "Investigatory record" means information compiled in the course of
3 the investigation of a crime.

4 "Patient" has the meaning set out in IC 16-18-2-272(d).

5 "Person" means an individual, a corporation, a limited liability
6 company, a partnership, an unincorporated association, or a
7 governmental entity.

8 "Provider" has the meaning set out in IC 16-18-2-295(a) and
9 includes employees of the state department of health or local boards of
10 health who create patient records at the request of another provider or
11 who are social workers and create records concerning the family
12 background of children who may need assistance.

13 "Public agency" means the following:

14 (1) Any board, commission, department, division, bureau,
15 committee, agency, office, instrumentality, or authority, by
16 whatever name designated, exercising any part of the executive,
17 administrative, judicial, or legislative power of the state.

18 (2) Any:

19 (A) county, township, school corporation, city, or town, or any
20 board, commission, department, division, bureau, committee,
21 office, instrumentality, or authority of any county, township,
22 school corporation, city, or town;

23 (B) political subdivision (as defined by IC 36-1-2-13); or

24 (C) other entity, or any office thereof, by whatever name
25 designated, exercising in a limited geographical area the
26 executive, administrative, judicial, or legislative power of the
27 state or a delegated local governmental power.

28 (3) Any entity or office that is subject to:

29 (A) budget review by either the department of local
30 government finance or the governing body of a county, city,
31 town, township, or school corporation; or

32 (B) an audit by the state board of accounts.

33 (4) Any building corporation of a political subdivision that issues
34 bonds for the purpose of constructing public facilities.

35 (5) Any advisory commission, committee, or body created by
36 statute, ordinance, or executive order to advise the governing
37 body of a public agency, except medical staffs or the committees
38 of any such staff.

39 (6) Any law enforcement agency, which means an agency or a
40 department of any level of government that engages in the
41 investigation, apprehension, arrest, or prosecution of alleged
42 criminal offenders, such as the state police department, the police

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or sheriff's department of a political subdivision, prosecuting attorneys, members of the excise police division of the alcohol and tobacco commission, conservation officers of the department of natural resources, and the security division of the state lottery commission.

(7) Any license branch staffed by employees of the bureau of motor vehicles commission under IC 9-16.

(8) The state lottery commission, including any department, division, or office of the commission.

(9) The Indiana gaming commission established under IC 4-33, including any department, division, or office of the commission.

(10) The Indiana horse racing commission established by IC 4-31, including any department, division, or office of the commission.

"Public record" means any writing, paper, report, study, map, photograph, book, card, tape recording, or other material that is created, received, retained, maintained, ~~used~~, or filed by or with a public agency and which is generated on paper, paper substitutes, photographic media, chemically based media, magnetic or machine readable media, electronically stored data, or any other material, regardless of form or characteristics.

"Standard-sized documents" includes all documents that can be mechanically reproduced (without mechanical reduction) on paper sized eight and one-half (8 1/2) inches by eleven (11) inches or eight and one-half (8 1/2) inches by fourteen (14) inches.

"Trade secret" has the meaning set forth in IC 24-2-3-2.

"Work product of an attorney" means information compiled by an attorney in reasonable anticipation of litigation and includes the attorney's:

(1) notes and statements taken during interviews of prospective witnesses; and

(2) legal research or records, correspondence, reports, or memoranda to the extent that each contains the attorney's opinions, theories, or conclusions.

This definition does not restrict the application of any exception under section 4 of this chapter.

SECTION 6. IC 5-14-3-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. (a) Any person may inspect and copy the public records of any public agency during the regular business hours of the agency, except as provided in section 4 of this chapter. A request for inspection or copying must:

(1) identify with reasonable particularity the record being requested; and

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(2) be, at the discretion of the agency, in writing on or in a form provided by the agency.

No request may be denied because the person making the request refuses to state the purpose of the request, unless such condition is required by other applicable statute.

(b) A public agency may not deny or interfere with the exercise of the right stated in subsection (a). The public agency shall either:

(1) provide the requested copies to the person making the request; or

(2) allow the person to make copies:

(A) on the agency's equipment; or

(B) on ~~his~~ **the person's** own equipment.

(c) Notwithstanding subsections (a) and (b), a public agency may or may not do the following:

(1) In accordance with a contract described in section 3.5 of this chapter, permit a person to inspect and copy through the use of enhanced access public records containing information owned by or entrusted to the public agency.

(2) Permit a governmental entity to use an electronic device to inspect and copy public records containing information owned by or entrusted to the public agency.

(d) Except as provided in subsection (e), a public agency that maintains or contracts for the maintenance of public records in an electronic data storage system shall make reasonable efforts to provide to a person making a request a copy of all disclosable data contained in the records on paper, disk, tape, drum, or any other method of electronic retrieval if the medium requested is compatible with the agency's data storage system. This subsection does not apply to an electronic map. ~~(as defined by IC 5-14-3-2).~~

(e) A state agency may adopt a rule under IC 4-22-2, and a political subdivision may enact an ordinance, prescribing the conditions under which a person who receives information on disk or tape under subsection (d) may or may not use the information for commercial purposes, including to sell, advertise, or solicit the purchase of merchandise, goods, or services, or sell, loan, give away, or otherwise deliver the information obtained by the request to any other person ~~(as defined in IC 5-14-3-2)~~ for these purposes. Use of information received under subsection (d) in connection with the preparation or publication of news, for nonprofit activities, or for academic research is not prohibited. A person who uses information in a manner contrary to a rule or ordinance adopted under this subsection may be prohibited by the state agency or political subdivision from obtaining a copy or any

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further data under subsection (d).

(f) **Notwithstanding the other provisions of this section, a public agency is not required to create or provide copies of lists of names and addresses, unless the public agency is required to publish such lists and disseminate them to the public under a statute. However, if a public agency has created a list of names and addresses, it must permit a person to inspect and make memoranda abstracts from the list unless access to the list is prohibited by law. The following lists of names and addresses may not be disclosed by public agencies to commercial entities for commercial purposes and may not be used by commercial entities for commercial purposes:**

(1) A list of employees of a public agency.

(2) A list of persons attending conferences or meetings at a state institution of higher education or of persons involved in programs or activities conducted or supervised by the state institution of higher education.

(3) A list of students who are enrolled in a public school corporation if the governing body of the public school corporation adopts a policy:

(A) prohibiting the disclosure of the list to commercial entities for commercial purposes; or

(B) specifying the classes or categories of commercial entities to which the list may not be disclosed or by which the list may not be used for commercial purposes.

A policy adopted under subdivision (3) must be uniform and may not discriminate among similarly situated commercial entities.

(g) A public agency may not enter into or renew a contract or an obligation:

(1) for the storage or copying of public records; or

(2) that requires the public to obtain a license or pay copyright royalties for obtaining the right to inspect and copy the records unless otherwise provided by applicable statute;

if the contract, obligation, license, or copyright unreasonably impairs the right of the public to inspect and copy the agency's public records.

~~(g)~~ **(h)** If this section conflicts with IC 3-7, the provisions of IC 3-7 apply.

SECTION 7. IC 5-14-3-4, AS AMENDED BY P.L.1-2002, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. (a) The following public records are excepted from section 3 of this chapter and may not be disclosed by a public agency, unless access to the records is specifically required by a state or federal statute or is ordered by a court under the rules of



1 discovery:

- 2 (1) Those declared confidential by state statute.
- 3 (2) Those declared confidential by rule adopted by a public
- 4 agency under specific authority to classify public records as
- 5 confidential granted to the public agency by statute.
- 6 (3) Those required to be kept confidential by federal law.
- 7 (4) Records containing trade secrets.
- 8 (5) Confidential financial information obtained, upon request,
- 9 from a person. However, this does not include information that is
- 10 filed with or received by a public agency pursuant to state statute.
- 11 (6) Information concerning research, including actual research
- 12 documents, conducted under the auspices of an institution of
- 13 higher education, including information:
 - 14 (A) concerning any negotiations made with respect to the
 - 15 research; and
 - 16 (B) received from another party involved in the research.
- 17 (7) Grade transcripts and license examination scores obtained as
- 18 part of a licensure process.
- 19 (8) Those declared confidential by or under rules adopted by the
- 20 supreme court of Indiana.
- 21 (9) Patient medical records and charts created by a provider,
- 22 unless the patient gives written consent under IC 16-39.
- 23 (10) Application information declared confidential by the
- 24 twenty-first century research and technology fund board under
- 25 IC 4-4-5.1.
- 26 ~~(11) The following personal information concerning a customer~~
- 27 ~~of a municipally owned utility (as defined in IC 8-1-2-1):~~
- 28 ~~(A) Telephone number.~~
- 29 ~~(B) Social Security number.~~
- 30 ~~(C) Address.~~
- 31 ~~(12)~~ (11) A photograph, a video recording, or an audio recording
- 32 of an autopsy, except as provided in IC 36-2-14-10.
- 33 (b) Except as otherwise provided by subsection (a), the following
- 34 public records shall be excepted from section 3 of this chapter at the
- 35 discretion of a public agency:
 - 36 (1) Investigatory records of law enforcement agencies. However,
 - 37 certain law enforcement records must be made available for
 - 38 inspection and copying as provided in section 5 of this chapter.
 - 39 (2) The work product of an attorney representing, pursuant to
 - 40 state employment or an appointment by a public agency:
 - 41 (A) a public agency;
 - 42 (B) the state; or

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- 1 (C) an individual.
- 2 (3) Test questions, scoring keys, and other examination data used
- 3 in administering a licensing examination, examination for
- 4 employment, or academic examination before the examination is
- 5 given or if it is to be given again.
- 6 (4) Scores of tests if the person is identified by name and has not
- 7 consented to the release of ~~his~~ **the person's** scores.
- 8 (5) The following:
- 9 (A) Records relating to negotiations between the department
- 10 of commerce, the Indiana development finance authority, the
- 11 film commission, the Indiana business modernization and
- 12 technology corporation, or economic development
- 13 commissions with industrial, research, or commercial
- 14 prospects, if the records are created while negotiations are in
- 15 progress.
- 16 (B) Notwithstanding clause (A), the terms of the final offer of
- 17 public financial resources communicated by the department of
- 18 commerce, the Indiana development finance authority, the
- 19 Indiana film commission, the Indiana business modernization
- 20 and technology corporation, or economic development
- 21 commissions to an industrial, a research, or a commercial
- 22 prospect shall be available for inspection and copying under
- 23 section 3 of this chapter after negotiations with that prospect
- 24 have terminated.
- 25 (C) When disclosing a final offer under clause (B), the
- 26 department of commerce shall certify that the information
- 27 being disclosed accurately and completely represents the terms
- 28 of the final offer.
- 29 (6) Records that are intra-agency or interagency advisory or
- 30 deliberative material, including material developed by a private
- 31 contractor under a contract with a public agency, that are
- 32 expressions of opinion or are of a speculative nature, and that are
- 33 communicated for the purpose of decision making.
- 34 (7) Diaries, journals, or other personal notes serving as the
- 35 functional equivalent of a diary or journal.
- 36 (8) Personnel files of public employees and files of applicants for
- 37 public employment, except for:
- 38 (A) the name, compensation, job title, business address,
- 39 business telephone number, job description, education and
- 40 training background, previous work experience, or dates of
- 41 first and last employment of present or former officers or
- 42 employees of the agency;

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(B) information relating to the status of any formal charges against the employee; and

(C) information concerning disciplinary actions in which final action has been taken and that resulted in the employee being disciplined or discharged.

However, all personnel file information shall be made available to the affected employee or ~~his~~ **the employee's** representative. This subdivision does not apply to disclosure of personnel information generally on all employees or for groups of employees without the request being particularized by employee name.

(9) Minutes or records of hospital medical staff meetings.

(10) Administrative or technical information that would jeopardize a recordkeeping or security system.

(11) Computer programs, computer codes, computer filing systems, and other software that are owned by the public agency or entrusted to it and portions of electronic maps entrusted to a public agency by a utility.

(12) Records specifically prepared for discussion or developed during discussion in an executive session under IC 5-14-1.5-6.1. However, this subdivision does not apply to that information required to be available for inspection and copying under subdivision (8).

(13) The work product of the legislative services agency under personnel rules approved by the legislative council.

(14) The work product of individual members and the partisan staffs of the general assembly.

(15) The identity of a donor of a gift made to a public agency if:

(A) the donor requires nondisclosure of ~~his~~ **the donor's** identity as a condition of making the gift; or

(B) after the gift is made, the donor or a member of the donor's family requests nondisclosure.

(16) Library or archival records:

(A) which can be used to identify any library patron; or

(B) deposited with or acquired by a library upon a condition that the records be disclosed only:

(i) to qualified researchers;

(ii) after the passing of a period of years that is specified in the documents under which the deposit or acquisition is made; or

(iii) after the death of persons specified at the time of the acquisition or deposit.

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However, nothing in this subdivision shall limit or affect contracts entered into by the Indiana state library pursuant to IC 4-1-6-8.

(17) The identity of any person who contacts the bureau of motor vehicles concerning the ability of a driver to operate a motor vehicle safely and the medical records and evaluations made by the bureau of motor vehicles staff or members of the driver licensing advisory committee. However, upon written request to the commissioner of the bureau of motor vehicles, the driver must be given copies of the driver's medical records and evaluations that concern the driver.

(18) School safety and security measures, plans, and systems, including emergency preparedness plans developed under 511 IAC 6.1-2-2.5.

(19) A record or a part of a record, the public disclosure of which would have a reasonable likelihood of threatening public safety by exposing a vulnerability to terrorist attack. A record described under this subdivision includes:

(A) a record assembled, prepared, or maintained to prevent, mitigate, or respond to an act of terrorism under IC 35-47-12-1 or an act of agricultural terrorism under IC 35-47-12-2;

(B) vulnerability assessments;

(C) risk planning documents;

(D) needs assessments;

(E) threat assessments;

(F) domestic preparedness strategies;

(G) the location of community drinking water wells and surface water intakes;

(H) the emergency contact information of emergency responders and volunteers;

(I) infrastructure records that disclose the configuration of critical systems such as communication, electrical, ventilation, water, and wastewater systems; and

(J) detailed drawings or specifications of structural elements, floor plans, and operating, utility, or security systems, whether in paper or electronic form, of any building or facility located on an airport (as defined in IC 8-21-1-1) that is owned, occupied, leased, or maintained by a public agency. A record described in this clause may not be released for public inspection by the department of fire and building services without the prior approval of the public agency that submitted the record to the department.

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The submitting agency:

(i) is responsible for determining whether the public disclosure of a record or a part of a record has a reasonable likelihood of threatening public safety by exposing a vulnerability to terrorist attack; and

(ii) must identify a record described under item (i) and clearly mark the record as "confidential and not subject to public disclosure under IC 5-14-3-4(19)(I) without approval of (insert name of submitting public agency)".

This subdivision does not apply to a record or portion of a record pertaining to a location or structure owned or protected by a public agency in the event that an act of terrorism under IC 35-47-12-1 or an act of agricultural terrorism under IC 35-47-12-2 has occurred at that location or structure, unless release of the record or portion of the record would have a reasonable likelihood of threatening public safety by exposing a vulnerability of other locations or structures to terrorist attack.

(20) The following personal information concerning a customer of a municipally owned utility (as defined in IC 8-1-2-1):

(A) Telephone number.

(B) Address.

(C) Social Security number.

(c) Notwithstanding section 3 of this chapter, a public agency is not required to create or provide copies of lists of names and addresses, unless the public agency is required to publish such lists and disseminate them to the public pursuant to statute. However, if a public agency has created a list of names and addresses, it must permit a person to inspect and make memoranda abstracts from the lists unless access to the lists is prohibited by law. The following lists of names and addresses may not be disclosed by public agencies to commercial entities for commercial purposes and may not be used by commercial entities for commercial purposes:

(1) A list of employees of a public agency.

(2) A list of persons attending conferences or meetings at a state institution of higher education or of persons involved in programs or activities conducted or supervised by the state institution of higher education.

(3) A list of students who are enrolled in a public school corporation if the governing body of the public school corporation adopts a policy:

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1 (A) prohibiting the disclosure of the list to commercial entities
2 for commercial purposes; or

3 (B) specifying the classes or categories of commercial entities
4 to which the list may not be disclosed or by which the list may
5 not be used for commercial purposes.

6 A policy adopted under subdivision (3) must be uniform and may not
7 discriminate among similarly situated commercial entities.

8 ~~(d)~~ (c) Nothing contained in subsection (b) shall limit or affect the
9 right of a person to inspect and copy a public record required or
10 directed to be made by any statute or by any rule of a public agency.

11 ~~(e)~~ (d) Notwithstanding any other law, a public record that is
12 classified as confidential, other than a record concerning an adoption,
13 shall be made available for inspection and copying seventy-five (75)
14 years after the creation of that record.

15 ~~(f)~~ (e) Notwithstanding subsection ~~(e)~~ (d) and section 7 of this
16 chapter:

17 (1) public records subject to IC 5-15 may be destroyed only in
18 accordance with record retention schedules under IC 5-15; or

19 (2) public records not subject to IC 5-15 may be destroyed in the
20 ordinary course of business.

21 SECTION 8. IC 5-14-3-9, AS AMENDED BY P.L.191-1999,
22 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
23 UPON PASSAGE]: Sec. 9. (a) A denial of disclosure by a public
24 agency occurs when the person making the request is physically present
25 in the office of the agency, makes the request by telephone, or requests
26 enhanced access to a document and:

27 (1) the person designated by the public agency as being
28 responsible for public records release decisions refuses to permit
29 inspection and copying of a public record when a request has
30 been made; or

31 (2) twenty-four (24) hours elapse after any employee of the public
32 agency refuses to permit inspection and copying of a public
33 record when a request has been made;

34 whichever occurs first.

35 (b) If a person requests by mail or by facsimile a copy or copies of
36 a public record, a denial of disclosure does not occur until seven (7)
37 days have elapsed from the date the public agency receives the request.

38 (c) If a request is made orally, either in person or by telephone, a
39 public agency may deny the request orally. However, if a request
40 initially is made in writing, by facsimile, or through enhanced access,
41 or if an oral request that has been denied is renewed in writing or by
42 facsimile, a public agency may deny the request if:



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1 (1) the denial is in writing or by facsimile; and

2 (2) the denial includes:

3 (A) a statement of the specific exemption or exemptions
4 authorizing the withholding of all or part of the public record;
5 and

6 (B) the name and the title or position of the person responsible
7 for the denial.

8 **(d) This subsection applies to a board, a commission, a**
9 **department, a division, a bureau, a committee, an agency, an office,**
10 **an instrumentality, or an authority, by whatever name designated,**
11 **exercising any part of the executive, administrative, judicial, or**
12 **legislative power of the state. If an agency receives a request to**
13 **inspect or copy a record that the agency considers to be excepted**
14 **from disclosure under section 4(b)(19) of this chapter, the agency**
15 **may consult with the counterterrorism and security council**
16 **established under IC 4-3-20. If an agency denies the disclosure of**
17 **a record or a part of a record under section 4(b)(19) of this**
18 **chapter, the agency or the counterterrorism and security council**
19 **shall provide a general description of the record being withheld**
20 **and of how disclosure of the record would have a reasonable**
21 **likelihood of threatening the public safety.**

22 **(e)** A person who has been denied the right to inspect or copy a
23 public record by a public agency may file an action in the circuit or
24 superior court of the county in which the denial occurred to compel the
25 public agency to permit the person to inspect and copy the public
26 record. Whenever an action is filed under this subsection, the public
27 agency must notify each person who supplied any part of the public
28 record at issue:

29 (1) that a request for release of the public record has been denied;
30 and

31 (2) whether the denial was in compliance with an informal inquiry
32 response or advisory opinion of the public access counselor.

33 Such persons are entitled to intervene in any litigation that results from
34 the denial. The person who has been denied the right to inspect or copy
35 need not allege or prove any special damage different from that
36 suffered by the public at large.

37 **(f)** The court shall determine the matter de novo, with the burden
38 of proof on the public agency to sustain its denial. If the issue in de
39 novo review under this section is whether a public agency properly
40 denied access to a public record because the record is exempted under
41 section 4(a) of this chapter, the public agency meets its burden of proof
42 under this subsection by establishing the content of the record with



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adequate specificity and not by relying on a conclusory statement or affidavit.

~~(f)~~ **(g)** If the issue in a de novo review under this section is whether a public agency properly denied access to a public record because the record is exempted under section 4(b) of this chapter:

(1) the public agency meets its burden of proof under this subsection by:

(A) proving that the record falls within any one (1) of the categories of exempted records under section 4(b) of this chapter; and

(B) establishing the content of the record with adequate specificity and not by relying on a conclusory statement or affidavit; and

(2) a person requesting access to a public record meets the person's burden of proof under this subsection by proving that the denial of access is arbitrary or capricious.

~~(g)~~ **(h)** The court may review the public record in camera to determine whether any part of it may be withheld under this chapter.

~~(h)~~ **(i)** In any action filed under this section, a court shall award reasonable ~~attorney~~ **attorney's** fees, court costs, and other reasonable expenses of litigation to the prevailing party if:

(1) the plaintiff substantially prevails; or

(2) the defendant substantially prevails and the court finds the action was frivolous or vexatious.

The plaintiff is not eligible for the awarding of attorney's fees, court costs, and other reasonable expenses if the plaintiff filed the action without first seeking and receiving an informal inquiry response or advisory opinion from the public access counselor, unless the plaintiff can show the filing of the action was necessary because the denial of access to a public record under this chapter would prevent the plaintiff from presenting that public record to a public agency preparing to act on a matter of relevance to the public record whose disclosure was denied.

~~(i)~~ **(j)** A court shall expedite the hearing of an action filed under this section.

SECTION 9. IC 9-14-3-5, AS AMENDED BY HEA 1968-2003, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 5. (a) Except as provided in subsection (b), (c), or (d), the bureau shall prepare and deliver information on titles, registrations, and licenses and permits upon the request of any person. All requests must be submitted in writing to the bureau and, unless exempted under IC 9-29, must be accompanied by the payment of the

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1 fee prescribed in IC 9-29-2-2.

2 (b) The bureau ~~may~~ **shall** not disclose:

- 3 (1) the Social Security number;
- 4 (2) the federal identification number;
- 5 (3) the driver's license number;
- 6 (4) the digital image of the driver's license applicant; ~~or~~
- 7 (5) a reproduction of the signature secured under IC 9-24-9-1 or
- 8 IC 9-24-16-3; **or**

9 **(6) medical or disability information;**

10 of any person except to a law enforcement officer or an agent or a
11 designee of the department of state revenue **or for uses permitted**
12 **under IC 9-14-3.5-10(1), IC 9-14-3.5-10(4), IC 9-14-3.5-10(6), and**
13 **IC 9-14-3.5-10(9).**

14 (c) As provided under 42 U.S.C. 1973gg-3(b), the commission may
15 not disclose any information concerning the failure of an applicant for
16 a motor vehicle driver's license to sign a voter registration application,
17 except as authorized under IC 3-7-14.

18 (d) The commission may not disclose any information concerning
19 the failure of an applicant for a title, registration, license, or permit
20 (other than a motor vehicle license described under subsection (c)) to
21 sign a voter registration application, except as authorized under
22 IC 3-7-14.

23 SECTION 10. IC 9-14-3.5-10, AS AMENDED BY P.L.39-2000,
24 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
25 UPON PASSAGE]: Sec. 10. **Except as provided in section 10.5 of**
26 **this chapter**, the bureau may disclose personal information to a person
27 if the person requesting the information provides proof of identity and
28 represents that the use of the personal information will be strictly
29 limited to at least one (1) of the following:

- 30 (1) For use by a government agency, including a court or law
- 31 enforcement agency, in carrying out its functions, or a person
- 32 acting on behalf of a government agency in carrying out its
- 33 functions.
- 34 (2) For use in connection with matters concerning:
- 35 (A) motor vehicle or driver safety and theft;
- 36 (B) motor vehicle emissions;
- 37 (C) motor vehicle product alterations, recalls, or advisories;
- 38 (D) performance monitoring of motor vehicles, motor vehicle
- 39 parts, and dealers;
- 40 (E) motor vehicle market research activities, including survey
- 41 research; and
- 42 (F) the removal of nonowner records from the original owner



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- 1 records of motor vehicle manufacturers.
- 2 (3) For use in the normal course of business by a business or its
- 3 agents, employees, or contractors, but only:
- 4 (A) to verify the accuracy of personal information submitted
- 5 by an individual to the business or its agents, employees, or
- 6 contractors; and
- 7 (B) if information submitted to a business is not correct or is
- 8 no longer correct, to obtain the correct information only for
- 9 purposes of preventing fraud by, pursuing legal remedies
- 10 against, or recovering on a debt or security interest against, the
- 11 individual.
- 12 (4) For use in connection with a civil, a criminal, an
- 13 administrative, or an arbitration proceeding in a court or
- 14 government agency or before a self-regulatory body, including the
- 15 service of process, investigation in anticipation of litigation, and
- 16 the execution or enforcement of judgments and orders, or under
- 17 an order of a court.
- 18 (5) For use in research activities, and for use in producing
- 19 statistical reports, as long as the personal information is not
- 20 published, re-disclosed, or used to contact the individuals who are
- 21 the subject of the personal information.
- 22 (6) For use by an insurer, an insurance support organization, or a
- 23 self-insured entity, or the agents, employees, or contractors of an
- 24 insurer, an insurance support organization, or a self-insured entity
- 25 in connection with claims investigation activities, anti-fraud
- 26 activities, rating, or underwriting.
- 27 (7) For use in providing notice to the owners of towed or
- 28 impounded vehicles.
- 29 (8) For use by a licensed private investigative agency or licensed
- 30 security service for a purpose allowed under this section.
- 31 (9) For use by an employer or its agent or insurer to obtain or
- 32 verify information relating to a holder of a commercial driver's
- 33 license that is required under the Commercial Motor Vehicle
- 34 Safety Act of 1986 (49 U.S.C. 2710 et seq.).
- 35 (10) For use in connection with the operation of private toll
- 36 transportation facilities.
- 37 (11) For any use in response to requests for individual motor
- 38 vehicle records when the bureau has obtained the written consent
- 39 of the person to whom the personal information pertains.
- 40 (12) For bulk distribution for surveys, marketing, or solicitations
- 41 when the bureau has obtained the written consent of the person to
- 42 whom the personal information pertains.

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(13) For use by any person, when the person demonstrates, in a form and manner prescribed by the bureau, that written consent has been obtained from the individual who is the subject of the information.

(14) For any other use specifically authorized by law that is related to the operation of a motor vehicle or public safety.

However, this section does not affect the use of anatomical gift information on a person's driver's license or identification document issued by the bureau, nor does it affect the administration of anatomical gift initiatives in the state.

SECTION 11. IC 9-14-3.5-10.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 10.5. (a) Except as provided in subsections (b) and (c), the bureau may not disclose the following personal information from a person's motor vehicle record:**

- (1) Driver's license photograph or computerized image.
- (2) Social Security number.
- (3) Medical or disability information.

(b) The bureau may disclose the personal information described in subsection (a) if the bureau has the express written consent of the person to whom the personal information pertains to release the information described in subsection (a).

(c) The bureau may disclose the personal information described in subsection (a) without the express written consent of the person to whom the personal information pertains if the person requesting the information:

- (1) provides proof of identity; and
- (2) represents that the use of the personal information will be strictly limited to at least one (1) of the uses set forth in section 10(1), 10(4), 10(6), and 10(9) of this chapter.

SECTION 12. IC 10-13-3-36, AS ADDED BY SEA 257-2003, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 36. (a) The department may not charge a fee for responding to a request for the release of a limited criminal history record if the request is made by a nonprofit organization:

- (1) that has been in existence for at least ten (10) years; and
- (2) that:
 - (A) has a primary purpose of providing an individual relationship for a child with an adult volunteer if the request is made as part of a background investigation of a prospective adult volunteer for the organization;
 - (B) is a home health agency licensed under IC 16-27-1;



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(C) is a community mental retardation and other developmental disabilities center (as defined in IC 12-7-2-39);
or
(D) is a supervised group living facility licensed under IC 12-28-5.

(b) **Except as provided in subsection (d)**, the department may not charge a fee for responding to a request for the release of a limited criminal history record made by the division of family and children or a county office of family and children if the request is made as part of a background investigation of an applicant for a license under IC 12-17.2 or IC 12-17.4.

(c) The department may not charge a fee for responding to a request for the release of a limited criminal history if the request is made by a school corporation, special education cooperative, or non-public school (as defined in IC 20-10.1-1-3) as part of a background investigation of an employee or adult volunteer for the school corporation, special education cooperative, or nonpublic school.

(d) **As used in this subsection, "state agency" means an authority, a board, a branch, a commission, a committee, a department, a division, or another instrumentality of state government, including the executive and judicial branches of state government, the principal secretary of the senate, the principal clerk of the house of representatives, the executive director of the legislative services agency, a state elected official's office, or a body corporate and politic, but does not include a state educational institution (as defined in IC 20-12-0.5-1). The department may not charge a fee for responding to a request for the release of a limited criminal history if the request is made:**

(1) by a state agency; and

(2) through the computer gateway that is administered by the intelenet commission under IC 5-21-2 and known as accessIndiana.

SECTION 13. IC 10-13-3-38.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 38.5. (a) Under federal P.L.92-544 (86 Stat. 1115), the department may use an individual's fingerprints submitted by the individual for the following purposes:**

(1) **Determining the individual's suitability for employment with the state, or as an employee of a contractor of the state, in a position:**

(A) that has a job description that includes contact with,

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care of, or supervision over a person less than eighteen (18) years of age;

(B) that has a job description that includes contact with, care of, or supervision over an endangered adult (as defined in IC 12-10-3-2), except the individual is not required to meet the standard for harmed or threatened with harm set forth in IC 12-10-3-2(a)(3);

(C) at a state institution managed by the office of the secretary of family and social services or state department of health;

(D) at the Indiana School for the Deaf established by IC 20-16-2-1;

(E) at the Indiana School for the Blind established by IC 20-15-2-1;

(F) at a juvenile detention facility;

(G) with the gaming commission under IC 4-33-3-16;

(H) with the department of financial institutions under IC 28-11-2-3; or

(I) that has a job description that includes access to or supervision over state financial or personnel data, including state warrants, banking codes, or payroll information pertaining to state employees.

(2) Identification in a request related to an application for a teacher's license submitted to the professional standards board established under IC 20-1-1.4.

An applicant shall submit the fingerprints in an appropriate format or on forms provided for the employment or license application. The department shall charge each applicant the fee established under section 28 of this chapter and by federal authorities to defray the costs associated with a search for and classification of the applicant's fingerprints. The department may forward fingerprints submitted by an applicant to the Federal Bureau of Investigation or any other agency for processing. The state personnel department or the agency to which the applicant is applying for employment or a license may receive the results of all fingerprint investigations.

(b) An applicant who is an employee of the state may not be charged under subsection (a).

(c) Subsection (a)(1) does not apply to an employee of a contractor of the state if the contract involves the construction or repair of a capital project or other public works project of the state.



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SECTION 14. IC 16-19-10-6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 6. (a) The state department may conduct surveys:**

- (1) concerning the health status of Indiana residents; and**
- (2) evaluating the effectiveness of the state department's programs.**

(b) Information contained in a survey described in subsection (a) that identifies or could be used to determine the identity of a person responding to the survey is confidential. All other information contained in the survey is not confidential and is available for inspection and copying under IC 5-14-3.

(c) For purposes of this section, "survey" does not include data or information that is generated, collected, or transferred under IC 16-21-6-7 or IC 16-39-5-3.

SECTION 15. IC 16-19-10-7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 7. (a) This section does not apply to medical or epidemiological information protected from disclosure under IC 16-41-8-1 or data or information that is confidential under IC 16-21-6-7 or IC 16-39-5-3.**

(b) Except as provided in subsection (c), medical or epidemiological information:

- (1) collected from or volunteered by a person; and**
- (2) that results in or from:**
 - (A) a public health surveillance;**
 - (B) a public health investigation; or**
 - (C) an epidemiological investigation or study;**

may be released only in a form that protects the identity of a person whose medical or epidemiological information was obtained.

(c) Medical or epidemiological information described in subsection (b) may be released in a form that does not protect the identity of a person whose medical or epidemiological information was obtained if:

- (1) the person consents in writing to the release of the person's medical or epidemiological information; or**
- (2) the investigation or study results in an administrative or a judicial proceeding and release of the medical or epidemiological information is ordered by the administrative law judge or the court.**

SECTION 16. [EFFECTIVE UPON PASSAGE] **(a)**



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1 Notwithstanding IC 9-14-3-5(b), the bureau of motor vehicles shall
2 not disclose:

- 3 (1) the Social Security number;
- 4 (2) the federal identification number;
- 5 (3) the driver's license number;
- 6 (4) the digital image of the driver's license applicant;
- 7 (5) a reproduction of the signature secured under IC 9-24-9-1
- 8 or IC 9-24-16-3; or
- 9 (6) medical or disability information;

10 of any person except to a law enforcement officer or an agent or a
11 designee of the department of state revenue or for uses permitted
12 under IC 9-14-3.5-10(1), IC 9-14-3.5-10(4), IC 9-14-3.5-10(6), and
13 IC 9-14-3.5-10(9).

14 (b) This SECTION expires June 30, 2003.

15 SECTION 17. [EFFECTIVE UPON PASSAGE] (a) The state
16 police department may not charge a fee for responding to a request
17 for the release of a limited criminal history record if the request is
18 made by a nonprofit organization:

- 19 (1) that has been in existence for at least ten (10) years; and
- 20 (2) that:
 - 21 (A) has a primary purpose of providing an individual
 - 22 relationship for a child with an adult volunteer if the
 - 23 request is made as part of a background investigation of a
 - 24 prospective adult volunteer for the organization;
 - 25 (B) is a home health agency licensed under IC 16-27-1;
 - 26 (C) is a community mental retardation and other
 - 27 developmental disabilities center (as defined in
 - 28 IC 12-7-2-39); or
 - 29 (D) is a supervised group living facility licensed under
 - 30 IC 12-28-5.

31 (b) Notwithstanding IC 5-2-5-13, except as provided in
32 subsection (d), the state police department may not charge a fee for
33 responding to a request for the release of a limited criminal history
34 record made by the division of family and children or a county
35 office of family and children if the request is made as part of a
36 background investigation of an applicant for a license under
37 IC 12-17.2 or IC 12-17.4.

38 (c) The state police department may not charge a fee for
39 responding to a request for the release of a limited criminal history
40 if the request is made by a school corporation, special education
41 cooperative, or non-public school (as defined in IC 20-10.1-1-3) as
42 part of a background investigation of an employee or adult



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1 volunteer for the school corporation, special education cooperative,
2 or nonpublic school.

3 (d) As used in this subsection, "state agency" means an
4 authority, a board, a branch, a commission, a committee, a
5 department, a division, or another instrumentality of state
6 government, including the executive and judicial branches of state
7 government, the principal secretary of the senate, the principal
8 clerk of the house of representatives, the executive director of the
9 legislative services agency, a state elected official's office, or a body
10 corporate and politic, but does not include a state educational
11 institution (as defined in IC 20-12-0.5-1). Notwithstanding
12 IC 5-2-5-13, the state police department may not charge a fee for
13 responding to a request for the release of a limited criminal history
14 if the request is made:

15 (1) by a state agency; and

16 (2) through the computer gateway that is administered by the
17 intelnet commission under IC 5-21-2 and known as
18 accessIndiana.

19 (e) This SECTION expires June 30, 2003.

20 SECTION 18. An emergency is declared for this act.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Appointments and Claims, to which was referred House Bill 1935, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, line 3, delete "IC 5-14-3-3(f)" and insert "**IC 5-14-3-3(f)**".

Page 3, line 13, delete "IC 20-1-1.4-2," and insert "**IC 20-1-1.4-2**".

Page 3, line 14, after "or" insert "**an**".

Page 3, between lines 19 and 20, begin a new paragraph and insert:
"SECTION 3. IC 4-1-9 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]:

Chapter 9. Background Check of Employees of Bodies Corporate and Politic

Sec. 1. This chapter applies only to a body corporate and politic.

Sec. 2. A body corporate and politic shall establish a policy for conducting background checks of persons for purposes of employment with the body corporate and politic.

Sec. 3. A policy adopted under this chapter may not be less stringent than a background check policy implemented by the state personnel department for employment with a state agency that is subject to the jurisdiction of the state personnel department."

Page 4, line 9, delete "other" and insert "**another**".

Page 4, line 10, delete ", legislative,".

Page 4, line 11, after "government," insert "**the principal secretary of the senate, the principal clerk of the house of representatives, the executive director of the legislative services agency,**".

Page 4, delete lines 20 through 32.

Page 4, line 35, after "14.5." insert "**(a)**".

Page 4, line 39, delete "state" and insert "**state, or as an employee of a contractor of the state,**".

Page 5, line 4, delete "threatened to" and insert "**threatened with harm**".

Page 5, line 5, delete "be harmed".

Page 5, line 20, after "fingerprints" insert "**in an appropriate format or**".

Page 5, line 27, after "department" insert "**or the agency to which the applicant is applying for employment or a license**".

Page 5, between lines 28 and 29, begin a new paragraph and insert:
"(b) An applicant who is an employee of the state may not be charged under subsection (a).

(c) Subsection (a)(1) does not apply to an employee of a

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contractor of the state if the contract involves the construction or repair of a capital project or other public works project of the state.

SECTION 6. IC 5-14-3-2, AS AMENDED BY P.L.90-2002, SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2. As used in this chapter:

"Copy" includes transcribing by handwriting, photocopying, xerography, duplicating machine, duplicating electronically stored data onto a disk, tape, drum, or any other medium of electronic data storage, and reproducing by any other means.

"Direct cost" means one hundred five percent (105%) of the sum of the cost of:

- (1) the initial development of a program, if any;
- (2) the labor required to retrieve electronically stored data; and
- (3) any medium used for electronic output;

for providing a duplicate of electronically stored data onto a disk, tape, drum, or other medium of electronic data retrieval under section 8(g) of this chapter, or for reprogramming a computer system under section 6(c) of this chapter.

"Electronic map" means copyrighted data provided by a public agency from an electronic geographic information system.

"Enhanced access" means the inspection of a public record by a person other than a governmental entity and that:

- (1) is by means of an electronic device other than an electronic device provided by a public agency in the office of the public agency; or
- (2) requires the compilation or creation of a list or report that does not result in the permanent electronic storage of the information.

"Facsimile machine" means a machine that electronically transmits exact images through connection with a telephone network.

"Inspect" includes the right to do the following:

- (1) Manually transcribe and make notes, abstracts, or memoranda.
- (2) In the case of tape recordings or other aural public records, to listen and manually transcribe or duplicate, or make notes, abstracts, or other memoranda from them.
- (3) In the case of public records available:
 - (A) by enhanced access under section 3.5 of this chapter; or
 - (B) to a governmental entity under section 3(c)(2) of this chapter;

to examine and copy the public records by use of an electronic device.

- (4) In the case of electronically stored data, to manually transcribe

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and make notes, abstracts, or memoranda or to duplicate the data onto a disk, tape, drum, or any other medium of electronic storage.

"Investigatory record" means information compiled in the course of the investigation of a crime.

"Patient" has the meaning set out in IC 16-18-2-272(d).

"Person" means an individual, a corporation, a limited liability company, a partnership, an unincorporated association, or a governmental entity.

"Provider" has the meaning set out in IC 16-18-2-295(a) and includes employees of the state department of health or local boards of health who create patient records at the request of another provider or who are social workers and create records concerning the family background of children who may need assistance.

"Public agency" means the following:

(1) Any board, commission, department, division, bureau, committee, agency, office, instrumentality, or authority, by whatever name designated, exercising any part of the executive, administrative, judicial, or legislative power of the state.

(2) Any:

(A) county, township, school corporation, city, or town, or any board, commission, department, division, bureau, committee, office, instrumentality, or authority of any county, township, school corporation, city, or town;

(B) political subdivision (as defined by IC 36-1-2-13); or

(C) other entity, or any office thereof, by whatever name designated, exercising in a limited geographical area the executive, administrative, judicial, or legislative power of the state or a delegated local governmental power.

(3) Any entity or office that is subject to:

(A) budget review by either the department of local government finance or the governing body of a county, city, town, township, or school corporation; or

(B) an audit by the state board of accounts.

(4) Any building corporation of a political subdivision that issues bonds for the purpose of constructing public facilities.

(5) Any advisory commission, committee, or body created by statute, ordinance, or executive order to advise the governing body of a public agency, except medical staffs or the committees of any such staff.

(6) Any law enforcement agency, which means an agency or a department of any level of government that engages in the

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investigation, apprehension, arrest, or prosecution of alleged criminal offenders, such as the state police department, the police or sheriff's department of a political subdivision, prosecuting attorneys, members of the excise police division of the alcohol and tobacco commission, conservation officers of the department of natural resources, and the security division of the state lottery commission.

(7) Any license branch staffed by employees of the bureau of motor vehicles commission under IC 9-16.

(8) The state lottery commission, including any department, division, or office of the commission.

(9) The Indiana gaming commission established under IC 4-33, including any department, division, or office of the commission.

(10) The Indiana horse racing commission established by IC 4-31, including any department, division, or office of the commission.

"Public record" means any writing, paper, report, study, map, photograph, book, card, tape recording, or other material that is created, received, retained, maintained, ~~used~~, or filed by or with a public agency and which is generated on paper, paper substitutes, photographic media, chemically based media, magnetic or machine readable media, electronically stored data, or any other material, regardless of form or characteristics.

"Standard-sized documents" includes all documents that can be mechanically reproduced (without mechanical reduction) on paper sized eight and one-half (8 1/2) inches by eleven (11) inches or eight and one-half (8 1/2) inches by fourteen (14) inches.

"Trade secret" has the meaning set forth in IC 24-2-3-2.

"Work product of an attorney" means information compiled by an attorney in reasonable anticipation of litigation and includes the attorney's:

- (1) notes and statements taken during interviews of prospective witnesses; and
- (2) legal research or records, correspondence, reports, or memoranda to the extent that each contains the attorney's opinions, theories, or conclusions.

This definition does not restrict the application of any exception under section 4 of this chapter."

Page 6, line 22, after "map" insert ".".

Page 6, line 22, strike "(as defined by IC 5-14-3-2).".

Page 6, line 29, strike "(as".

Page 6, line 30, strike "defined in IC 5-14-3-2)".

Page 8, strike lines 18 through 22.

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Page 8, line 23, strike "(12)" and insert "(11)".

Page 8, delete line 25.

Page 10, block indent lines 36 through 38.

Page 11, delete lines 8 through 34, begin a new line block indented and insert:

"(19) A record or a part of a record, the public disclosure of which would have a reasonable likelihood of threatening public safety by exposing a vulnerability to terrorist attack. A record described under this subdivision includes:

(A) a record assembled, prepared, or maintained to prevent, mitigate, or respond to an act of terrorism under IC 35-47-12-1 or an act of agricultural terrorism under IC 35-47-12-2;

(B) vulnerability assessments;

(C) risk planning documents;

(D) needs assessments;

(E) threat assessments;

(F) domestic preparedness strategies;

(G) the location of community drinking water wells and surface water intakes; and

(H) the emergency contact information of emergency responders and volunteers.

(20) The following personal information concerning a customer of a municipally owned utility (as defined in IC 8-1-2-1):

(A) Telephone number.

(B) Address."

Page 12, between lines 30 and 31, begin a new paragraph and insert:

"SECTION 9. IC 5-14-3-9, AS AMENDED BY P.L.191-1999, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 9. (a) A denial of disclosure by a public agency occurs when the person making the request is physically present in the office of the agency, makes the request by telephone, or requests enhanced access to a document and:

(1) the person designated by the public agency as being responsible for public records release decisions refuses to permit inspection and copying of a public record when a request has been made; or

(2) twenty-four (24) hours elapse after any employee of the public agency refuses to permit inspection and copying of a public record when a request has been made;

whichever occurs first.



Copy

(b) If a person requests by mail or by facsimile a copy or copies of a public record, a denial of disclosure does not occur until seven (7) days have elapsed from the date the public agency receives the request.

(c) If a request is made orally, either in person or by telephone, a public agency may deny the request orally. However, if a request initially is made in writing, by facsimile, or through enhanced access, or if an oral request that has been denied is renewed in writing or by facsimile, a public agency may deny the request if:

- (1) the denial is in writing or by facsimile; and
- (2) the denial includes:
 - (A) a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record; and
 - (B) the name and the title or position of the person responsible for the denial.

(d) **This subsection applies to a board, a commission, a department, a division, a bureau, a committee, an agency, an office, an instrumentality, or an authority, by whatever name designated, exercising any part of the executive, administrative, judicial, or legislative power of the state. If an agency receives a request to inspect or copy a record that the agency considers to be excepted from disclosure under section 4(b)(19) of this chapter, the agency may consult with the counterterrorism and security council established under IC 4-3-20. If an agency denies the disclosure of a record or a part of a record under section 4(b)(19) of this chapter, the agency or the counterterrorism and security council shall provide a general description of the record being withheld and of how disclosure of the record would have a reasonable likelihood of threatening the public safety.**

(e) A person who has been denied the right to inspect or copy a public record by a public agency may file an action in the circuit or superior court of the county in which the denial occurred to compel the public agency to permit the person to inspect and copy the public record. Whenever an action is filed under this subsection, the public agency must notify each person who supplied any part of the public record at issue:

- (1) that a request for release of the public record has been denied; and
- (2) whether the denial was in compliance with an informal inquiry response or advisory opinion of the public access counselor.

Such persons are entitled to intervene in any litigation that results from the denial. The person who has been denied the right to inspect or copy

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need not allege or prove any special damage different from that suffered by the public at large.

~~(e)~~ **(f)** The court shall determine the matter de novo, with the burden of proof on the public agency to sustain its denial. If the issue in de novo review under this section is whether a public agency properly denied access to a public record because the record is exempted under section 4(a) of this chapter, the public agency meets its burden of proof under this subsection by establishing the content of the record with adequate specificity and not by relying on a conclusory statement or affidavit.

~~(f)~~ **(g)** If the issue in a de novo review under this section is whether a public agency properly denied access to a public record because the record is exempted under section 4(b) of this chapter:

(1) the public agency meets its burden of proof under this subsection by:

(A) proving that the record falls within any one (1) of the categories of exempted records under section 4(b) of this chapter; and

(B) establishing the content of the record with adequate specificity and not by relying on a conclusory statement or affidavit; and

(2) a person requesting access to a public record meets the person's burden of proof under this subsection by proving that the denial of access is arbitrary or capricious.

~~(g)~~ **(h)** The court may review the public record in camera to determine whether any part of it may be withheld under this chapter.

~~(h)~~ **(i)** In any action filed under this section, a court shall award reasonable ~~attorney~~ **attorney's** fees, court costs, and other reasonable expenses of litigation to the prevailing party if:

(1) the plaintiff substantially prevails; or

(2) the defendant substantially prevails and the court finds the action was frivolous or vexatious.

The plaintiff is not eligible for the awarding of attorney's fees, court costs, and other reasonable expenses if the plaintiff filed the action without first seeking and receiving an informal inquiry response or advisory opinion from the public access counselor, unless the plaintiff can show the filing of the action was necessary because the denial of access to a public record under this chapter would prevent the plaintiff from presenting that public record to a public agency preparing to act on a matter of relevance to the public record whose disclosure was denied.

~~(i)~~ **(j)** A court shall expedite the hearing of an action filed under this

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section.

SECTION 10. IC 9-14-3-5, AS AMENDED BY P.L.225-1999, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 5. (a) Except as provided in subsection (b), (c), or (d), the bureau shall prepare and deliver information on titles, registrations, and licenses and permits upon the request of any person. All requests must be submitted in writing to the bureau and, unless exempted under IC 9-29, must be accompanied by the payment of the fee prescribed in IC 9-29-2-2.

(b) The bureau ~~may~~ **shall** not disclose the:

- (1) Social Security number;
- (2) federal identification number;
- (3) driver's license number; ~~or~~
- (4) digital image of the driver's license applicant; **or**
- (5) medical or disability information;**

of any person except to a law enforcement officer or an agent or a designee of the department of state revenue **or for uses permitted under IC 9-14-3.5-10(1), IC 9-14-3.5-10(4), IC 9-14-3.5-10(6), and IC 9-14-3.5-10(9).**

(c) As provided under 42 U.S.C. 1973gg-3(b), the commission may not disclose any information concerning the failure of an applicant for a motor vehicle driver's license to sign a voter registration application, except as authorized under IC 3-7-14.

(d) The commission may not disclose any information concerning the failure of an applicant for a title, registration, license, or permit (other than a motor vehicle license described under subsection (c)) to sign a voter registration application, except as authorized under IC 3-7-14."

Page 14, line 33, delete "if:" and insert **"if the person requesting the information:"**.

Page 14, line 34, delete "the person requesting the information".

Page 15, between lines 8 and 9, begin a new paragraph and insert:

"(c) For purposes of this section, "survey" does not include data or information that is generated, collected, or transferred under IC 16-21-6-7 or IC 16-39-5-3."

Page 15, line 13, delete "IC 16-41-8-1." and insert **"IC 16-41-8-1 or data or information that is confidential under IC 16-21-6-7 or**

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IC 16-39-5-3."

Renumber all SECTIONS consecutively.
and when so amended that said bill do pass.

(Reference is to HB 1935 as introduced.)

HARRIS, Chair

Committee Vote: yeas 10, nays 0.

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EH 1935—LS 7826/DI 87+



COMMITTEE REPORT

Mr. President: The Senate Committee on Transportation and Homeland Security, to which was referred House Bill No. 1935, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Replace the effective dates in SECTIONS 1 through 14 with "[EFFECTIVE UPON PASSAGE]".

Page 3, between lines 25 and 26, begin a new paragraph and insert: **"Sec. 2. This chapter does not apply to a political subdivision."**

Page 3, line 26, delete "2." and insert "3."

Page 3, line 29, delete "3." and insert "4."

Page 3, delete lines 33 through 42, begin a new paragraph and insert:

"SECTION 4. IC 4-33-4-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 18. The state police department shall assist the commission in conducting background investigations of applicants. **The commission may forward all fingerprints required to be submitted by license applicants under IC 4-33 to the Federal Bureau of Investigation or any other agency for the purpose of screening applicants.** The commission shall reimburse the state police department for the costs incurred by the state police department as a result of the assistance. The commission shall make the payment from fees collected from applicants."

Delete page 4.

Page 5, delete lines 1 through 39.

Page 10, line 4, delete "the lists unless access to the lists" and insert **"the list unless access to the list"**.

Page 14, line 23, delete "and".

Page 14, line 25, delete "volunteers." and insert **"volunteers;**

(I) infrastructure records that disclose the configuration of critical systems such as communication, electrical, ventilation, water, and wastewater systems; and

(J) detailed drawings or specifications of structural elements, floor plans, and operating, utility, or security systems, whether in paper or electronic form, of any building or facility located on an airport (as defined in IC 8-21-1-1) that is owned, occupied, leased, or maintained by a public agency. A record described in this clause may not be released for public inspection by the department of fire and building services without the prior approval of the public agency that submitted the record to the department.



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The submitting agency:

- (i) is responsible for determining whether the public disclosure of a record or a part of a record has a reasonable likelihood of threatening public safety by exposing a vulnerability to terrorist attack; and
- (ii) must identify a record described under item (i) and clearly mark the record as "confidential and not subject to public disclosure under IC 5-14-3-4(19)(I) without approval of (insert name of submitting public agency)".

This subdivision does not apply to a record or portion of a record pertaining to a location or structure owned or protected by a public agency in the event that an act of terrorism under IC 35-47-12-1 or an act of agricultural terrorism under IC 35-47-12-2 has occurred at that location or structure, unless release of the record or portion of the record would have a reasonable likelihood of threatening public safety by exposing a vulnerability of other locations or structures to terrorist attack."

Page 14, between lines 30 and 31, begin a new line double block indented and insert:

"(C) Social Security number."

Page 17, delete line 42.

Page 18, delete lines 1 through 26, begin a new paragraph and insert:

"SECTION 10. IC 9-14-3-5, AS AMENDED BY HEA 1968-2003, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 5. (a) Except as provided in subsection (b), (c), or (d), the bureau shall prepare and deliver information on titles, registrations, and licenses and permits upon the request of any person. All requests must be submitted in writing to the bureau and, unless exempted under IC 9-29, must be accompanied by the payment of the fee prescribed in IC 9-29-2-2.

(b) The bureau ~~may~~ **shall** not disclose:

- (1) the Social Security number;
- (2) the federal identification number;
- (3) the driver's license number;
- (4) the digital image of the driver's license applicant; ~~or~~
- (5) a reproduction of the signature secured under IC 9-24-9-1 or IC 9-24-16-3; **or**

(6) medical or disability information;

of any person except to a law enforcement officer or an agent or a designee of the department of state revenue **or for uses permitted**



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under IC 9-14-3.5-10(1), IC 9-14-3.5-10(4), IC 9-14-3.5-10(6), and IC 9-14-3.5-10(9).

(c) As provided under 42 U.S.C. 1973gg-3(b), the commission may not disclose any information concerning the failure of an applicant for a motor vehicle driver's license to sign a voter registration application, except as authorized under IC 3-7-14.

(d) The commission may not disclose any information concerning the failure of an applicant for a title, registration, license, or permit (other than a motor vehicle license described under subsection (c)) to sign a voter registration application, except as authorized under IC 3-7-14."

Page 20, between lines 34 and 35, begin a new paragraph and insert:

"SECTION 13. IC 10-13-3-36, AS ADDED BY SEA 257-2003, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 36. (a) The department may not charge a fee for responding to a request for the release of a limited criminal history record if the request is made by a nonprofit organization:

(1) that has been in existence for at least ten (10) years; and

(2) that:

(A) has a primary purpose of providing an individual relationship for a child with an adult volunteer if the request is made as part of a background investigation of a prospective adult volunteer for the organization;

(B) is a home health agency licensed under IC 16-27-1;

(C) is a community mental retardation and other developmental disabilities center (as defined in IC 12-7-2-39); or

(D) is a supervised group living facility licensed under IC 12-28-5.

(b) **Except as provided in subsection (d)**, the department may not charge a fee for responding to a request for the release of a limited criminal history record made by the division of family and children or a county office of family and children if the request is made as part of a background investigation of an applicant for a license under IC 12-17.2 or IC 12-17.4.

(c) The department may not charge a fee for responding to a request for the release of a limited criminal history if the request is made by a school corporation, special education cooperative, or non-public school (as defined in IC 20-10.1-1-3) as part of a background investigation of an employee or adult volunteer for the school corporation, special education cooperative, or nonpublic school.

(d) **As used in this subsection, "state agency" means an**

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authority, a board, a branch, a commission, a committee, a department, a division, or another instrumentality of state government, including the executive and judicial branches of state government, the principal secretary of the senate, the principal clerk of the house of representatives, the executive director of the legislative services agency, a state elected official's office, or a body corporate and politic, but does not include a state educational institution (as defined in IC 20-12-0.5-1). The department may not charge a fee for responding to a request for the release of a limited criminal history if the request is made:

- (1) by a state agency; and
- (2) through the computer gateway that is administered by the intelnet commission under IC 5-21-2 and known as accessIndiana.

SECTION 14. IC 10-13-3-38.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 38.5. (a) Under federal P.L.92-544 (86 Stat. 1115), the department may use an individual's fingerprints submitted by the individual for the following purposes:

- (1) Determining the individual's suitability for employment with the state, or as an employee of a contractor of the state, in a position:
 - (A) that has a job description that includes contact with, care of, or supervision over a person less than eighteen (18) years of age;
 - (B) that has a job description that includes contact with, care of, or supervision over an endangered adult (as defined in IC 12-10-3-2), except the individual is not required to meet the standard for harmed or threatened with harm set forth in IC 12-10-3-2(a)(3);
 - (C) at a state institution managed by the office of the secretary of family and social services or state department of health;
 - (D) at the Indiana School for the Deaf established by IC 20-16-2-1;
 - (E) at the Indiana School for the Blind established by IC 20-15-2-1;
 - (F) at a juvenile detention facility;
 - (G) with the gaming commission under IC 4-33-3-16;
 - (H) with the department of financial institutions under IC 28-11-2-3; or



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(I) that has a job description that includes access to or supervision over state financial or personnel data, including state warrants, banking codes, or payroll information pertaining to state employees.

(2) Identification in a request related to an application for a teacher's license submitted to the professional standards board established under IC 20-1-1.4.

An applicant shall submit the fingerprints in an appropriate format or on forms provided for the employment or license application. The department shall charge each applicant the fee established under section 28 of this chapter and by federal authorities to defray the costs associated with a search for and classification of the applicant's fingerprints. The department may forward fingerprints submitted by an applicant to the Federal Bureau of Investigation or any other agency for processing. The state personnel department or the agency to which the applicant is applying for employment or a license may receive the results of all fingerprint investigations.

(b) An applicant who is an employee of the state may not be charged under subsection (a).

(c) Subsection (a)(1) does not apply to an employee of a contractor of the state if the contract involves the construction or repair of a capital project or other public works project of the state."

Page 21, after line 33, begin a new paragraph and insert:

"SECTION 15. [EFFECTIVE UPON PASSAGE] (a) Notwithstanding IC 9-14-3-5(b), the bureau of motor vehicles shall not disclose:

- (1) the Social Security number;
- (2) the federal identification number;
- (3) the driver's license number;
- (4) the digital image of the driver's license applicant;
- (5) a reproduction of the signature secured under IC 9-24-9-1 or IC 9-24-16-3; or
- (6) medical or disability information;

of any person except to a law enforcement officer or an agent or a designee of the department of state revenue or for uses permitted under IC 9-14-3.5-10(1), IC 9-14-3.5-10(4), IC 9-14-3.5-10(6), and IC 9-14-3.5-10(9).

(b) This SECTION expires June 30, 2003.

SECTION 16. [EFFECTIVE UPON PASSAGE] (a) The state police department may not charge a fee for responding to a request

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for the release of a limited criminal history record if the request is made by a nonprofit organization:

- (1) that has been in existence for at least ten (10) years; and
- (2) that:
 - (A) has a primary purpose of providing an individual relationship for a child with an adult volunteer if the request is made as part of a background investigation of a prospective adult volunteer for the organization;
 - (B) is a home health agency licensed under IC 16-27-1;
 - (C) is a community mental retardation and other developmental disabilities center (as defined in IC 12-7-2-39); or
 - (D) is a supervised group living facility licensed under IC 12-28-5.

(b) Notwithstanding IC 5-2-5-13, except as provided in subsection (d), the state police department may not charge a fee for responding to a request for the release of a limited criminal history record made by the division of family and children or a county office of family and children if the request is made as part of a background investigation of an applicant for a license under IC 12-17.2 or IC 12-17.4.

(c) The state police department may not charge a fee for responding to a request for the release of a limited criminal history if the request is made by a school corporation, special education cooperative, or non-public school (as defined in IC 20-10.1-1-3) as part of a background investigation of an employee or adult volunteer for the school corporation, special education cooperative, or nonpublic school.

(d) As used in this subsection, "state agency" means an authority, a board, a branch, a commission, a committee, a department, a division, or another instrumentality of state government, including the executive and judicial branches of state government, the principal secretary of the senate, the principal clerk of the house of representatives, the executive director of the legislative services agency, a state elected official's office, or a body corporate and politic, but does not include a state educational institution (as defined in IC 20-12-0.5-1). Notwithstanding IC 5-2-5-13, the state police department may not charge a fee for responding to a request for the release of a limited criminal history if the request is made:

- (1) by a state agency; and
- (2) through the computer gateway that is administered by the

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**intelenet commission under IC 5-21-2 and known as
accessIndiana.**

(e) This SECTION expires June 30, 2003.

SECTION 17. An emergency is declared for this act."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1935 as printed February 26, 2003.)

WYSS, Chairperson

Committee Vote: Yeas 6, Nays 0.

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